



March 23, 2001

ENGROSSED HOUSE BILL No. 1979

DIGEST OF HB 1979 (Updated March 21, 2001 4:38 PM - DI 84)

Citations Affected: IC 8-1.

Synopsis: Merchant power plants. Defines the term "merchant power plant". Provides that a merchant power plant is subject to the jurisdiction of the Indiana utility regulatory commission (IURC), except for a plant that has petitioned the IURC before March 1, 2001, for an order that the IURC decline to exercise its jurisdiction over the plant. Requires a merchant power plant to give notice of a proposed facility to property owners within one half mile of the proposed facility and to hold a field hearing to determine local support for the facility. Provides that after the field hearing, a majority of the property owners may request a hearing before the IURC. Requires the IURC to issue written findings based on testimony at the hearing. Establishes the
(Continued next page)

Effective: Upon passage.

Fry, Young D, Liggett, Munson

(SENATE SPONSORS — WEATHERWAX, LANANE)

January 17, 2001, read first time and referred to Committee on Commerce, Economic Development and Technology.

February 27, 2001, amended, reported — Do Pass.

March 5, 2001, read second time, amended, ordered engrossed.

March 6, 2001, engrossed. Read third time, passed. Yeas 68, nays 26.

SENATE ACTION

March 15, 2001, read first time and referred to Committee on Rules and Legislative Procedure.

March 22, 2001, amended, reported favorably — Do Pass; reassigned to Committee on Energy and Economic Development.

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criteria the Indiana utility regulatory commission (IURC) must consider when considering a merchant power plant application, including preferred siting locations. Provides that when considering whether to approve a plant, the IURC must obtain a recommendation from the department of natural resources (the "department") regarding the plant's planned use of and potential effect on a water resource. Requires a merchant power plant to provide to the IURC and the department an assessment, prepared by a licensed geologist or engineer, of its effect on the water resource and its users. Requires a merchant power plant that seeks: (1) approval from the IURC; or (2) alternative regulation by the IURC; to establish proof of financial responsibility in an amount determined by the IURC. Requires the IURC to issue a decision either approving or denying a merchant power plant's petition for approval or for alternative regulation not later than eighteen months after the date of the petition. Lists the duties of the merchant power plant following approval by the IURC. Provides that if a merchant power plant that has received IURC approval: (1) fails to commence construction of the plant within two years of the date of the IURC's approval; or (2) has not substantially completed construction of the plant within five years of the date of the IURC's approval; the IURC may revoke its approval of the plant. Provides that the IURC may decline to exercise jurisdiction over a facility that has applied to the IURC before March 1, 2001. Specifies that the IURC has jurisdiction over a merchant power plant that has made a significant alteration in the labor used to construct or remodel the facility.

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March 23, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

ENGROSSED HOUSE BILL No. 1979

A BILL FOR AN ACT to amend the Indiana Code concerning merchant power plants.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 8.4. Merchant Power Plants**

5 **Sec. 1. This chapter does not apply to a merchant power plant**
6 **that has filed a petition with the commission under IC 8-1-2.5**
7 **before March 1, 2001, seeking an order that the commission**
8 **decline to exercise, in whole or in part, its jurisdiction over the**
9 **merchant power plant.**

10 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
11 **means a facility within Indiana used for the:**

12 **(1) production, transmission, delivery, or furnishing of heat,**
13 **light, or power; and**

14 **(2) sale of electric energy exclusively on the wholesale market;**
15 **to other public utilities, energy service providers, or power**
16 **marketers within or outside Indiana.**

17 **(b) The term includes a facility that has made a significant**

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alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

Sec. 3. Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

Sec. 4. (a) The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

- (1) Location.
- (2) Need.
- (3) Financing.
- (4) Reporting requirements.
- (5) Impact on electric, water, and natural gas suppliers and customers.
- (6) The recommendation of the department of natural resources under section 5 of this chapter.

(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

Sec. 5. (a) When petitioning the commission under IC 8-1-8.5 or IC 8-1-2.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).



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(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.

(c) The commission may use:

- (1) a trust fund agreement;
- (2) a surety bond;
- (3) a letter of credit;
- (4) an insurance policy; or
- (5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.
- (2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

- (1) send notice of the petition by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and
- (2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

- (1) a description of the facility or proposed facility; and
- (2) the location, date, and time of the field hearing required by



section 5 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 5 of this chapter, a majority of the persons described in section 4(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 9. (a) Not later than thirty (30) days after a hearing is requested under section 6 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

(1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and

(2) before the commission issues a certificate of public convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

(1) all record owners of property located within one-half (1/2) mile of the proposed facility; and

(2) the merchant power plant.

(c) The parties to the hearing include:

(1) a person entitled to notice under section 7(b)(1) of this chapter; and

(2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 10. Not later than forty-five (45) days after a hearing is conducted under section 7 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 11. When considering whether to approve a merchant

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power plant, the commission shall give preference to the following locations for siting:

- (1) Brownfield sites that are isolated from populated areas.
- (2) Sites of existing or former utilities that can be replaced or repowered.
- (3) Other sites identified for power plant or heavy industrial development in local land use plans before the initiation of site selection for the facility.

Sec. 12. (a) For purposes of this section:

- (1) "department" refers to the department of natural resources; and
- (2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

- (1) Rely on the merchant power plant's water resource assessment under subsection (d).
- (2) Consult with and advise users of the water resource.
- (3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.
- (4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.
- (5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.
- (6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

- (1) Sources of water supply.
- (2) Total amount of water to be used by the merchant power plant for each source.
- (3) Location of wells or points of withdrawal.



(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:

(1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;

(2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility, or any affiliate of a regulated Indiana retail utility; and

(3) obtain prior commission approval of any transfers of ownership of the facility or its assets.

SECTION 2. An emergency is declared for this act.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Economic Development and Technology, to which was referred House Bill 1979, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL TO AMEND the Indiana Code concerning merchant power plants.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1979 as introduced.)

FRY, Chair

Committee Vote: yeas 10, nays 2.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 4, line 19, delete "subsection (1)(b)." and insert "**section (1)(b) of this chapter.**".

Page 4, line 21, delete "subsection" and insert "**section**".

Page 4, between lines 30 and 31, begin a new paragraph and insert:

"Sec. 4. (a) When petitioning the commission under IC 8-1-8.5 or IC 8-1-2.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.**
- (2) A surety bond with a standby trust fund agreement.**
- (3) A letter of credit with a standby trust fund agreement.**
- (4) An insurance policy with a standby trust fund agreement.**
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).**

(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and remediation; and**
- (2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.**

(c) The commission may use:

- (1) a trust fund agreement;**
- (2) a surety bond;**
- (3) a letter of credit;**
- (4) an insurance policy; or**
- (5) other proof of financial responsibility;**

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

- (1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power**

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(2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1)."

Page 4, line 31, delete "Sec. 4." and insert "**Sec. 5.**".

Page 4, line 40, delete "Sec. 5." and insert "**Sec. 6.**".

Page 5, line 2, after "the" delete " ".

Page 5, line 18, delete "IC 8-1-8.3-3(2)(C)," and insert "**IC 8-1-8.3-3(2)(C),**".

(Reference is to HB 1979 as printed February 28, 2001.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 4, line 19, delete "subsection (1)(b)." and insert "**section 1(b) of this chapter.**".

Page 4, line 21, delete "subsection (1)(a)" and insert "**section 1(a)**".

Page 4, line 21, delete "an" and insert "**a**".

Page 4, line 22, delete "application" and insert "**petition**".

Page 4, line 22, after "commission" insert "**under IC 8-1-2.5 or IC 8-1-8.5**".

Page 4, line 23, after "Sec. 3." insert "**(a)**".

Page 4, line 24, delete "IC 8-1-8.5" and insert "**IC 8-1-2.5**".

Page 4, line 25, delete "IC 8-1-2.5:" and insert "**IC 8-1-8.5:**".

Page 4, between lines 30 and 31, begin a new paragraph and insert: "**(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.**".

Page 5, line 2, delete "the commission" insert "**the commission**".

Page 5, line 18, delete "IC 8-1-8.3-3(2)(C)," and insert "**IC 8-1-8.3-3(2)(C),**".

(Reference is to HB 1979 as printed February 28, 2001.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 4, line 19, delete "subsection (1)(b)." and insert "**section 1(b) of this chapter.**".

Page 4, line 21, delete "subsection (1)(a)" and insert "**section (1)(a) of this chapter**".

Page 4, line 21, delete "an" and insert "a".

Page 4, line 22, delete "application" and insert "**petition**".

Page 4, line 24, delete "IC 8-1-8.5" and insert "**IC 8-1-2.5**".

Page 4, line 25, delete "IC 8-1-2.5:" and insert "**IC 8-1-8.5:**".

Page 4, line 31, after "4." insert "**(a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:**

(1) send notice of the petition by United States mail to all record owners of real property located within one-half (½) mile of the proposed facility; and

(2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

(1) a description of the facility or proposed facility; and

(2) the location, date, and time of the field hearing required by section 5 of this chapter.

Sec. 5. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 6. Not later than thirty (30) days after the field hearing required by section 5 of this chapter, a majority of the persons described in section 4(a)(1) of this chapter may request in writing a hearing before the commission.

Sec. 7. (a) Not later than thirty (30) days after a hearing is requested under section 6 of this chapter, the commission shall conduct a hearing at a location in a county in which the facility or proposed facility is or will be located. The hearing required by this subsection must be held:

(1) before or at the same time as the hearing required under IC 8-1-8.5-5(b); and

(2) before the commission issues a certificate of public



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convenience and necessity under IC 8-1-8.5.

(b) At least ten (10) days before the scheduled hearing, notice of the hearing must be served by first class mail on:

- (1) all record owners of property located within one-half (1/2) mile of the proposed facility; and
- (2) the merchant power plant.

(c) The parties to the hearing include:

- (1) a person entitled to notice under section 7(b)(1) of this chapter; and
- (2) the merchant power plant.

(d) The commission shall accept written or oral testimony from any person who appears at the public hearing, but the right to call and examine witnesses is reserved for the parties to the hearing.

(e) The commission shall make a record of the hearing and all testimony received. The commission shall make the record available for public inspection.

Sec. 8. Not later than forty-five (45) days after a hearing is conducted under section 7 of this chapter, the commission shall issue written findings based on the testimony presented at the hearing. To the extent the commission's findings differ from testimony presented at the hearing, the commission must explain its findings.

Sec. 9."

Page 4, line 40, delete "5." and insert "10."

Page 5, line 2, delete "the commission" and insert "the commission".

Page 5, line 18, delete "IC 8-1-8.3-3(2)(C)" and insert "IC 8-1-8.3-3(2)(C)".

(Reference is to HB 1979 as printed February 28, 2001.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 4, between lines 30 and 31, begin a new line block indented and insert:

"(6) The recommendation of the department of natural resources under section 5 of this chapter."

Page 4, line 40, after "5." insert "(a) For purposes of this section:

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(1) "department" refers to the department of natural resources; and

(2) "water resource" has the meaning set forth in IC 14-25-7-8.

(b) When considering whether to approve a merchant power plant, the commission shall obtain a recommendation from the department regarding the merchant power plant's planned use of and its potential effect on the water resource.

(c) To make its recommendation, the department may do the following:

(1) Rely on the merchant power plant's water resource assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

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Sec. 6."

(Reference is to HB 1979 as printed February 28, 2001.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 4, line 19, delete "subsection (1)(b)." and insert "**section 1(b) of this chapter.**".

Page 4, line 21, delete "subsection (1)(a)" and insert "**section 1(a)**".

Page 4, line 21, delete "an" and insert "**a**".

Page 4, line 22, delete "application" and insert "**petition**".

Page 4, line 22, after "commission" insert "**under IC 8-1-2.5 or IC 8-1-8.5**".

Page 4, line 24, delete "IC 8-1-8.5" and insert "**IC 8-1-2.5**".

Page 4, line 25, delete "IC 8-1-2.5:" and insert "**IC 8-1-8.5:**".

Page 4, line 30, after "electric" insert "**, water, and natural gas**".

Page 5, line 2, delete "the commission" insert "**the commission**".

Page 5, line 18, delete "IC 8-1-8.3-3(2)(C)," and insert "**IC 8-1-8.3-3(2)(C),**".

(Reference is to HB 1979 as printed February 28, 2001.)

CROOKS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1979 be amended to read as follows:

Page 3, line between lines 36 and 37, begin a new paragraph and insert:

"Sec. 1. This chapter does not apply to a merchant power plant that has filed a petition with the commission under IC 8-1-2.5 before March 1, 2001, seeking an order that the commission decline to exercise, in whole or in part, its jurisdiction over the merchant power plant."

Page 3, line 37, delete "1." and insert "**2.**".

Page 4, line 16, delete "2. (a) A" and insert "**3. Except as provided**".

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in section 1 of this chapter, a".

Page 4, delete lines 18 through 22.

Page 4, line 23, delete "3." and insert "4.".

Page 4, line 31, delete "4." and insert "5.".

Page 4, line 40, delete "5." and insert "6.".

(Reference is to HB 1979 as printed February 28, 2001.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred House Bill No. 1979, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 32.

Page 3, line 42, delete ""Merchant" and insert "**As used in this chapter, "merchant"**.

Page 5, line 42, delete "(1/2)" and insert "**(1/2)**".

Page 8, delete lines 29 through 42.

Page 9, delete lines 1 through 3.

Renumber all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Committee on Energy and Economic Development.

(Reference is to HB 1979 as reprinted March 6, 2001.)

GARTON, Chairperson

Committee Vote: Yeas 8, Nays 0.

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